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No.: **ICC-01/04-02/06**

Date: **18 May 2020**

THE APPEALS CHAMBER

Before:

**Judge Howard Morrison, Presiding
Judge Chile Eboe-Osuji
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa**

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR V. BOSCO NTAGANDA***

Public

**Request for an extension of time to file a reply to the “Prosecution response to
‘Sentencing Appeal Brief’”**

Source: Defence Team of Mr. Bosco Ntaganda

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Further to the “Decision on request for leave to reply” rendered by the Appeals Chamber on 15 May 2020,¹ Counsel for Mr. Bosco Ntaganda (“Defence”) hereby submit this:

Request for an extension of time to file a reply to the “Prosecution response to ‘Sentencing Appeal Brief’”

INTRODUCTION

1. Having been granted leave on 15 May 2020,² the Defence requests an extension of time to file its reply to the “Prosecution response to ‘Sentencing Appeal Brief’” (“Sentence Reply”).³ In order to be able to devote sufficient time and resources to the Sentence Reply in the context of the current appeal briefing schedule and the restricted working conditions caused by the COVID-19 pandemic, the Defence requests that it be permitted to file the Sentence Reply by 16h00 on Tuesday, 2 June 2020. In these circumstances and as more fully discussed below, good cause exists for the requested extension.

PROCEDURAL BACKGROUND

2. On 8 July 2019, Trial Chamber VI rendered its Judgment under article 74 of the Rome Statute (“Statute”). The Judgment found Mr. Ntaganda guilty of all eighteen charges against him.⁴ On 9 September 2019, the Defence gave notice of its intention to appeal the Judgment on 15 grounds.⁵ On the same day, the Prosecution did the same, advancing two grounds of appeal.⁶

¹ Decision on request for leave to reply, 15 May 2020, [ICC-01/04-02/06-2530](#) (“Decision”).

² [Decision](#), para.1.

³ Prosecution response to “Sentencing Appeal Brief”, 14 April 2020, [ICC-01/04-02/06-2509](#), (“Prosecution Sentence Response”).

⁴ Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#).

⁵ Mr. Ntaganda’s Notice of Appeal against the Judgment pursuant to Article 74 of the Statute, ICC-01/04-02/06-2359, 9 September 2019, [ICC-01/04-02/06-2396](#).

⁶ Prosecution notice of appeal, 9 September 2019, [ICC-01/04-02/06-2395](#).

3. On 7 October 2019, the Prosecution submitted its “Prosecution Appeal Brief”⁷ and on 9 December 2019, the Defence submitted its “Defence Response to Prosecution Appeal Brief.”⁸

4. On 7 November 2019, Trial Chamber VI delivered its Sentencing Judgment pursuant to articles 76, 77 and 78 of the Statute and rules 145 to 147 of the Rules of Procedure and Evidence. Mr. Ntaganda was sentenced to 30 years of imprisonment.⁹

5. On 11 November 2019, the Defence filed its “Defence Appeal Brief – Part I”.¹⁰ On 27 January 2020, the Prosecution filed its “Prosecution Response to Defence Appeal Brief – Part I”.¹¹

6. On 9 December 2019, the Defence filed its “Notice of Appeal against Sentencing Judgment”.

7. On 31 January 2020, the Defence filed its “Defence Appeal Brief – Part II”.¹²

8. On 10 February 2020, the Defence filed its “Sentencing Appeal Brief” (“Defence Sentencing Appeal Brief”).

9. On 3 April 2020, the Prosecution filed its “Prosecution Response – Part II”.¹³ On 15 April 2020, the Defence filed its “Request for Leave to Reply to the Prosecution Response – Part II.”¹⁴ On 4 May 2020, the Appeals Chamber rendered its “Decision

⁷ Prosecution Appeal Brief, 7 October 2019, [ICC-01/04-02/06-2432](#).

⁸ Defence Response to Prosecution Appeal Brief, 7 October 2019 (ICC-01/04-02/06-2432), 9 December 2019, [ICC-01/04-02/06-2449](#).

⁹ Sentencing Judgment, 7 November 2019, [ICC-01/04-02/06-2442](#).

¹⁰ Defence Appeal Brief – Part I, 11 November 2019, [ICC-01/04-02/06-2443](#).

¹¹ Prosecution Response to “Defence Appeal Brief – Part I”, 27 January 2020, [ICC-01/04-02/06-2464](#).

¹² Defence Appeal Brief – Part II, 31 January 2020, [ICC-01/04-02/06-2465](#).

¹³ Prosecution response to “Defence Appeal Brief – Part II”, 3 April 2020, [ICC-01/04-02/06-2500](#) (“Prosecution Response – Part II”).

¹⁴ Defence request for leave to reply to the Prosecution Response to Defence Appeal Brief – Part II, 15 April 2020, [ICC-01/04-02/06-2512](#).

on request for leave to reply”¹⁵ partially granting the Defence leave to reply to the Prosecution Response – Part II, in writing, by 19 May 2020.

10. On 14 April 2020, the Prosecution filed the Prosecution Sentence Response.

11. On 28 April 2020, the Defence filed its “Defence request for leave to reply to the “Prosecution response to ‘Sentencing Appeal Brief’”.¹⁶

12. On 6 May 2020, observations on the Defence Appeal Brief – Part II were filed by both the Common Legal Representative of the Victims of the Attacks¹⁷ and the Common Legal Representative of the Former Child Soldiers.¹⁸ The Prosecution and the Defence responses to these filings are due by 22 May 2020.

13. On 15 May 2020, the Appeals Chamber rendered the Decision granting the Defence leave to reply to the Prosecution Sentence Response on two issues by 22 May 2020.

14. On 15 May 2020, observations on the Defence Sentencing Appeal Brief were filed by both the Common Legal Representative of the Victims of the Attacks¹⁹ and the Common Legal Representative of the Former Child Soldiers.²⁰ The Prosecution and Defence’s responses to these filings are due by 2 June 2020.

¹⁵ Decision on request for leave to reply, 4 May 2020, [ICC-01/04-02/06-2522](#).

¹⁶ Defence request for leave to reply to the “Prosecution response to ‘Sentencing Appeal Brief’”, 28 April 2020, [ICC-01/04-02/06-2521](#).

¹⁷ Observations of the Common Legal Representative of the Victims of the Attacks on the Defence Appeal Part II, 6 May 2020, [ICC-01/04-02/06-2525](#).

¹⁸ Observations of the Common Legal Representative of the Former Child Soldiers on Part II of Mr Ntaganda’s Appeal against the Judgment pursuant to Article 74 of the Rome Statute, 6 May 2020, [ICC-01/04-02/06-2526](#).

¹⁹ Observations of the Common Legal Representative of the Victims of the Attacks on the Defence Sentencing Appeal, 15 May 2020, [ICC-01/04-02/06-2529](#).

²⁰ Observations of the Common Legal Representative of the Former Child Soldiers on Mr Ntaganda’s Appeal against the Sentencing judgment, 15 May 2020, [ICC-01/04-02/06-2531](#).

SUBMISSIONS

15. The Defence submits that good cause exists to grant the requested extension.

16. Following the issuance of the Decision on Friday, and in conformity with the current appeal briefing schedule, the Defence team is currently working on: (i) the reply to the Prosecution Response – Part II which is due on 19 May 2020; (ii) a response to the observations of the Common Legal Representative of the Victims of the Attacks on the Defence Appeal Brief Part II which is due by 22 May 2020; (iii) a response to the observations of the Common Legal Representative of the Former Child Soldiers on the Defence Appeal Brief Part II which is due by 22 May 2020; (iv) the Sentence Reply which is due by 22 May 2020; (v) a response to the observations of the Common Legal Representative of the Victims of the Attacks on the Defence Sentencing Appeal Brief which is due by 2 June 2020; and (vi) a response to the observations of the Common Legal Representative of the Former Child Soldiers on the Defence Sentencing Appeal Brief which is due by 2 June 2020.

17. As the Appeals Chamber is aware from the Defence’s recent filing,²¹ due to the restrictions which are currently in force to deal with the COVID-19 pandemic, the above described work is now being undertaken in difficult circumstances. While it is recognised that all members of the Defence team are responsible for ensuring that they are able to properly discharge their professional responsibilities, the reality is that the current health crisis means that team members are working from home and now have extensive caring responsibilities to balance with professional commitments. The restrictions in place mean that those caring responsibilities cannot be shared or otherwise managed, as would normally be the case. The result is that significant periods of time which would otherwise be dedicated to work are no longer available.

²¹ *Corrigendum* to the “Defence submissions on the scheduled oral hearing”, 5 May, ICC-01/04-02/06-2524, 6 May 2020, [ICC-01/04-02/06-2524-Corr](#), para.13.

18. In addition, and as also previously highlighted,²² the Defence team's ability to conduct additional legal research is constrained by the COVID-19 restrictions which prevent research visits to libraries including the ICC library. Accordingly, the team is limited to online legal resources. However, not all relevant resources are available online. For example, in relation to the preparation of the Sentence Reply, the Defence has identified that three of the sources relied on by the Prosecution which are relevant to the Ninth issue are not available on-line.²³ Of course, the Defence will request the Prosecution's assistance to access these authorities and is confident that the Prosecution will provide the required assistance. However, this will only take the Defence so far. Further, research is required to assess and counter the Prosecution's arguments and sources. The reality is that legal research in the current circumstances takes longer and is more difficult.

19. Accordingly, in order to be able to devote sufficient time and resources to the Sentence Reply in the context of the current working conditions and briefing schedule, the Defence requests an extension of time. Defence team resources are currently fully engaged in meeting the deadlines set for the filing of the reply to the Prosecution Response – Part II (due 19 May 2020) and the responses to the Common Legal Representatives' observations of the Defence Appeal Brief – Part II (both of which are due 22 May 2020).

20. While it is acknowledged that leave to reply to the Prosecution Sentence Response has been granted in respect of two issues only, the Defence submits that neither issue is straightforward, and each will require a considered response, supported by relevant research and authority. In order to be able to prepare such a response, additional time is required.

²² *Corrigendum* to the "Defence submissions on the scheduled oral hearing", 5 May, ICC-01/04-02/06-2524, 6 May 2020, [ICC-01/04-02/06-2524-Corr](#), para.15.

²³ [Prosecution Sentence Response](#), fn.164 (S. Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford: OUP, 2012); S. Casey-Maslen with S. Haines, *Hague Law Interpreted: the Conduct of Hostilities under the Law of Armed Conflict* (Oxford: Hart, 2018); and N. Melzer, *Targeted Killing in International Law* (Oxford: OUP, 2008)).

21. If the Appeals Chamber is minded to grant the requested extension, the Defence submits that it would be of assistance if the completion of the briefing schedule on the sentence appeal was streamlined and, thus, if all remaining Defence sentencing briefs were ordered to be filed by 16h00 on Tuesday, 2 June 2020. Given that this date has been fixed already in relation to the filing of the response to the Common Legal Representatives' sentencing observations, the current schedule would not be prolonged by the Defence request and, thus, would not result in any prejudice to any party.

CONCLUSION AND RELIEF SOUGHT

22. The Defence therefore respectfully requests the Appeals Chamber to:

GRANT the request for an extension of time to file the Sentence Reply;
and

ORDER the Defence to file the Sentence Reply by 16h00 on Tuesday, 2 June 2020.

RESPECTFULLY SUBMITTED ON THIS 18TH DAY OF MAY 2020



Me Stéphane Bourgon, Counsel representing Bosco Ntaganda

The Hague, The Netherlands